THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION Nos.17225 & 18734 OF 2005

COMMON ORDER:

Since common questions of fact and law arise for consideration, these two Writ Petitions are heard together and decided by this common order.

The petitioners in W.P.No.17225 of 2005 claim to be Ayacutdars of Achannapalem, Avapadu and Singarajupalem of Nallajerla Mandal of West Godavari District; whereas, the petitioners in W.P.No.18734 of 2005, claim to be the residents of Nallajerla village whose agricultural lands fall in between KM 46 to KM 68 under Package No.III of the right main canal of the Polavaram Project.

Both the writ petitions are filed questioning the proceedings of the Chief Engineer, Central Designs Organization, dated 22.06.2005, whereunder, approval has been granted for R4 alignment of the Right Main Canal of Polavaram Project, Package No.III (from KM 46.000 to KM 68.283).

The facts, which are not in dispute, may be noted as under:

Polavaram Project, now known as Indira Sagar Project was proposed on the river Godavari at Polavaram, West Godavari District, to solve the irrigation problems in Visakhapatnam, East Godavari, West Godavari and Krishna Districts, meeting the irrigation water requirement to an extent of 7.20 lakh acres, apart from providing drinking water to all the villages enroute, in addition to supply of industrial water to Visakhapatnam. The work on Right Main Canal of Polavaram Project with a proposed length of 174 KMs has been undertaken by the Government in seven packages. Out of the said seven packages, package No.III covers the work from KM 38.199 to KM 71.50. For the purpose of the said Package No.III, having invited tenders, the work was entrusted to the 5th respondent - M/s Hindustan Construction Company Limited vide agreement dated 23.10.2004

under Engineering Procurement and Construction (EPC) system. The said work includes designing, constructing and maintaining canal and the contractor is also responsible for carrying out detailed investigation, preparation of drawings and getting approval of the Chief Engineer, Central Designs Organization, Hyderabad and executing the work in all respects within the period agreed. As per the EPC system of contract, the contracting agency under the departmental guidance has to conduct detailed investigations and draw the most suitable alignment that satisfies the guidelines issued by the Chief Engineer, Central Designs Organization, and the technical committee appointed by the Government of Andhra Pradesh. The Chief Engineer, Central Designs Organization, is the final authority for finalizing the alignment for execution.

The Hindustan Construction Company Limited, which is arrayed as the 5th respondent in both the Writ Petitions, has investigated seven alternative alignments under the technical guidance of the Chief Engineer, Central Designs Organization, and technical committee. The Chief Engineer, Central Designs Organization, after considering the said alignments under the impugned proceedings dated 22.06.2005 approved R4 alignment, which covers the length from KM 46 to KM 68.

The petitioners state that the 5th respondent while submitting various alternatives in terms of the guidelines of the Chief Engineer, Central Designs Organization, decisively recommended for approval of the RO(M) alignment which is the most economical and technically viable alignment from KM 46 to KM 78. In spite of the same, the Government has approved R4 alignment, which is unviable both technically and economically, apart from being in violation of their own guidelines. It is alleged that R4 alignment has been approved for various extraneous considerations including political pressures. It is also alleged that he proposed R4 alignment while crossing Erra Kaluva, a major stream at Ananthapally, would result in catastrophic situations by inundating the adjacent lands including the village of the

petitioners owing to insufficient headway clearance. That apart, it would also jeopardize the riparian ryots of the alignment in 32 villages and in the surrounding extents, who will be forced to lift the water by utilizing artificial methods necessitating use of electricity. It is also alleged that by approving R4 alignment, the Government will be required to acquire additional 1600 acres of land compared to any other alignment suggested by the 5th respondent, for which additional expenditure will be incurred towards payment of compensation for the lands acquired.

Thus, according to the petitioners, the R4 alignment approved by the Government under the impugned proceedings dated 22.06.2005 is not at all viable and therefore the Government ought to have approved RO(M) alignment which is the most technically and economically viable alignment. It is also stated that the petitioners along with Ayacutdars of Ananthapalli, Achannapalem, Nallajerla, Avapadu and Singarajupalem made representation dated 27.06.2005 to the 3rd respondent-District Collector, West Godavari, requesting not to consider the expensive and technically unviable R4 alignment and instead approve any of the other economical and viable alternative alignments. However, there is no response. Hence, these writ petitions.

The learned Senior Counsel Sri D. Prakash Reddy, appearing for the petitioners in W.P.No.17225 of 2005, while submitting that the proposed R4 alignment is not technically viable, explained that R-4 alignment will cross Errakaluva which is a major stream having a drain discharge of 3000 cusecs at Ananthapalli, where there is only one metre clearance and the same will not be sufficient for construction of Aqueduct which needs the headway clearance of minimum four metres. The learned Senior Counsel submits that by constructing Aqueduct at Ananthapalli the water of Errakaluva will be obstructed and there is every likelihood of inundation of adjacent agricultural lands as well as the villages of the petitioners. The learned

counsel contends that whereas, the guidelines given by the Chief Engineer, Central Designs Organization, required that as far as possible alignment shall be taken avoiding higher embankment and deep cuts, the proposed R4 alignment crosses Avapadu village where deep cuts extending to 22 metres are involved. On the other hand, the other alternative alignments suggested by the 5th respondent involve only 2 to 3 metres of deep cutting and the same is in accordance with the guidelines. The learned counsel also points out that under the Package No.III, seven sluices are required to be constructed through which a total 49,000 acres can be brought under irrigation, however, since there are hillocks extended to almost 25 to 30 metres width and 4 to 5 metres in length in R4 alignment, it may not be possible to construct even a single sluice.

Sri P. Venugopal, the learned counsel appearing for the petitioners in W.P.No.18734 of 2005, further contended that the impugned proceedings dated 22.06.2005 have been issued mechanically without application of mind to the relevant aspects. The learned counsel submits that as a matter of fact, the Government having conducted a detailed survey finalized an alignment before the tenders were notified, according to which, the proposed boundaries of the canal were villages of Gundepalli, Telikicherla, Jaggannapeta, Venkata Ramana Gudem and Unguturu from K.M.46 to KM 68. However, after the tenders were finalized the respective Contractors were directed to re-survey as per the guidelines issued by the 4th respondent and after such re-survey, the 5th respondent, so far as Package No.III is concerned, submitted an economically and technically feasible alignment-RO(M). Hence, the 1st respondent was not justified in ignoring RO(M) alignment and preferring R4 alignment, which is totally contrary to the guidelines issued by the Chief Engineer, Central Designs Organization.

On the other hand, the learned Government Pleader appearing

for respondent Nos.1 to 4 submits that the alignment has been finalized by the 4th respondent after considering various aspects and on the basis of the opinion of the experts. He contends that all the allegations made by the petitioners, who do not have any technical background to understand the intricacies involved in finalization of the alignment, are unfounded and without any basis. He also submits that the work is already in progress in accordance with R4 alignment and the decision taken by the Government in approving the said alignment being a policy decision, the judicial review is impermissible, and therefore, the Writ Petitions are liable to be dismissed *in limini.*

It is to be noted that the Chief Engineer, Polavaram Project filed a detailed counter-affidavit denying all the allegations made by the petitioners. It is stated that tenders were invited basing on detailed investigations carried out during 1983-84 under Polavaram Barrage Investigation Unit, which is now renamed as 'Indira Sagar Project'. As per the EPC system of contract, the contracting agency under the departmental guidance has to conduct detailed investigations and trace the most suitable alignment that satisfies the guidelines framed by the Chief Engineer, Central Designs Organization and also the Technical Committee constituted by the Government of A.P. The Chief Engineer, Central Designs Organization is the final authority to organise the alignment for execution. Out of the seven alternative alignments investigated by the 5th respondent Company, the Chief Engineer, Central Designs Organization, after thorough examination, approved R-4 alignment. Having considered the same in the meeting held by the experts consisting of the Chief Engineer, Central Designs Organization, the Chief Engineer, Indira Sagar Project and the expert designs, it was opined that it was advisable to avoid embankment reaches as the canal would carry a very big discharge of 497 cusecs and also keeping in view the flashy nature of floods of Errakaluva River which cross the said reach. That apart, as per the guidelines of the Chief Engineer, Central Designs Organization, the alignment has

been taken in cutting up to FSL depth and maximum embankment and deep cut shall be avoided as far as possible. The canal in question, if taken in embankment, would result in breaches and large-scale destruction due to heavy discharge of right main canal and the maintenance would be costly. Therefore, the R-4 alignment was considered as more suitable. It is also stated that as the proposals made by the 5th respondent were found to be unacceptable to the department as per Basic Engineering, the 5th respondent was advised to modify the final proposal to suite the guidelines and the proposed engineering which is a condition in the contract also. The Contractor despite clear instructions, proposed several alternatives keeping only the profit margin in mind and deliberately avoided most viable alignment with an ulterior motive of swindling Government money. It is also stated that R4 alignment is the most technically viable alignment as recommended by the 2nd respondent as well as technical committee and approved by the Chief Engineer, Central Designs Organization, Hyderabad. It is also stated that though R-4 alignment requires acquisition of more land, its trouble free performance was the prime criteria for finalizing the alignment. Hence, the said alignment was preferred and was approved. At any rate, the cost of additional land is negligible when compared to volume of risk involved if the canal runs in embankment. That apart, in the EPC system of contract, the contracting agency has to bear costs of increase of quantity as per Clause 38.1 of the agreement, and therefore, there is no extra expenditure to the Government on account of change of alignment. Thus, keeping in view the safety of the public, R4 alignment has been approved by the Chief Engineer, Central Designs Organization, who is the final authority. The allegations that if embankment is provided near Errakaluva, there is every possibility of breach of canal inundating crops and villages and that there is no possibility of constructing the proposed seven sluices have been categorically denied.

From the material on record, it is clear that the dispute raised by

the petitioners namely whether the R-4 alignment approved by the respondents 1 to 4 is not economically and technically viable is a question highly technical in nature. The detailed counter-affidavits filed by the respondents 1 to 4 demonstrate that the R-4 alignment was approved after consideration by the experts at different levels on several technical aspects. As held by the Apex Court in **NARMADA BACHAVO ANDOLAN v. UNION OF INDIA**[1] this Court in exercise of jurisdiction under Article 226 will not transgress into the correctness of such issue and will not adjudicate what type of alignment would be economically and technically viable. The Courts are ill-equipped to adjudicate on such issues. As observed in the above decision by the Supreme Court in respect of Public Projects and Policies, which are initiated by the Government and decisions are taken after due care and consideration, the Court should not become an approval authority. Even assuming that the alignment approved by the respondents causes prejudice to the petitioners, as held by the Supreme Court in the above decision, in a democracy welfare of the people at large and not merely of a small section of the society has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in conflict with any law or is not *mala fide*, it will not be in public interest to require the Court to go into and investigate those areas, which are the functions of the Executive. Hence, I am of the opinion that the Writ of Mandamus as prayed for cannot be granted on any of the grounds raised by the petitioners.

It is interesting to note that M/s. Hindu Constructions Company Limited, in whose favour the execution of package No.III was awarded on EPC basis, has been made a party to this writ petition as respondent No.5 and they filed a counter-affidavit stating that the alignment – RO(M) is the most appropriate and economically viable plan having regard to the peculiarities of the project. While supporting the alleged defects pointed out by the writ petitioners in R-4 alignment,

the 5th respondent contended that in the event of approving RO(M) alignment, it would not only protect the exchequer of the State but also advance the cause of agriculturists, since RO(M) design is on the ridge of the ayacut, whereas R-4 alignment is far away from the ayacut.

May be that, according to the 5th respondent contractor, RO(M) alignment is the most suitable, however, as expressed above, the Chief Engineer, Central Designs Organization is the final authority to take a decision and it is clear from the material on record that such a decision was taken after careful analysis of several technical aspects with the advise of the experts in the said field. This Court will never sit in appeal over such a decision, when there is absolutely no reason to characterize the said decision as arbitrary or *mala fide* and particularly in the absence of any allegation that such decision is in breach of any provision of law.

For the aforesaid reasons, the Writ Petitions are devoid of any merit and the interference by this court is not warranted.

Accordingly, both the Writ Petitions are dismissed. No costs.

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G. ROHINI, J.

Dt.28–03-2006
Kgr

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION Nos.17225 & 18734 OF 2005

Dated : 28th March, 2006.

Between:

1. Sri Boyapati Ramesh and 4 others. … Petitioners

And

1. Govt. of Andhra Pradesh, rep. by Principal Secretary, Irrigation Department, Secretariat, Hyderabad, and 4 others. … Respondents

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[1] (2000) 10 SCC 664